

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JANE DOE,

Plaintiff,

v.

No. 5:21-cv-00977-DNH-ML

**SYRACUSE UNIVERSITY, JOHN
WILDHACK, and JOHN DESKO,**

Defendants.

JOINT STATUS REPORT

Plaintiff Jane Doe (“Plaintiff”) and Defendants Syracuse University, John Wildhack, and John Desko (collectively, “Defendants”), by and through their undersigned counsel, respectfully submit this joint status report pursuant to the Court’s January 31, 2024 Order. *See* Dkt. 51.

The Parties last appeared before the Court on January 31, 2024 for the Rule 16 Initial Conference. At that conference, the Court stayed Defendants’ obligation to respond to the operative pleading, declined Plaintiff’s request for bifurcated discovery schedules, and continued the Rule 16 Conference without date. *See* Dkt. 51.

In addition, the Court set a briefing schedule for Plaintiff’s anticipated Rule 15 motion for leave to file an amended complaint, as well as a deadline for Defendants’ anticipated Rule 12 motion to dismiss certain forms of relief sought in connection with the claim remanded by the Second Circuit Court of Appeals. *See id.* The Court further directed that “if Plaintiff no longer intends to file a motion to amend complaint or if parties consent to Plaintiff filing an amended complaint, Plaintiff shall file a status report by 2/21/2024 advising the Court as such.” *See id.*

Consistent with that order, the Parties hereby advise the Court that Defendants intend to consent to the filing of an amended complaint in this matter under Rule 15(a)(2) of the Federal Rules of Civil Procedure, subject to the following conditions, which are set forth in the stipulation filed concurrently with this joint status report:

1. Defendants consent under Rule 15(a)(2) to the filing of Plaintiff's First Amended Complaint as provided to Defendants' counsel on February 20, 2024, and Plaintiff shall file that pleading no later than 2 days after the concurrently filed stipulation is so-ordered by the Court;

2. In providing this consent, Defendants expressly reserve all rights to challenge Plaintiff's First Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure subject to the below;

3. For the avoidance of doubt, the Parties agree that any such Rule 12(b)(6) motion will not challenge as inadequately pleaded the Title IX retaliation claim remanded by the Second Circuit, and that any Rule 12(b)(6) motion as to that claim will be limited to certain forms of relief sought in connection with that claim;

4. For the avoidance of doubt, the Parties agree that any such Rule 12(b)(6) motion is not barred on the grounds that Defendants consented to the filing of Plaintiff's First Amended Complaint or on the grounds that Defendants' anticipated Rule 12(b)(6) motion is a successive motion to dismiss, and Plaintiff will not argue as such in opposition to any such motion;

5. Defendants' anticipated Rule 12(b)(6) motion shall be due no later than 23 days after the concurrently filed stipulation is so-ordered by the Court;

6. Plaintiff's opposition shall be due no later than 21 days after the motion is filed;

7. Defendants' reply shall be due no later than 14 days after the opposition is filed;

and

8. Any obligation by Defendants to otherwise answer Plaintiff's original Complaint or First Amended Complaint is stayed pending resolution of Defendants' anticipated motion.

In addition, Plaintiff will comply with the Court's directive at the Rule 16 Initial Conference that, when filing the amended complaint, the docket text must note that the amended complaint is filed with consent.

Dated: February 21, 2024

Respectfully Submitted,

CALCATERRA LAW PC

/s/ James Aliaga

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